STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

DEPARTMENT OF ATTORNEY GENERAL

2011 ANNUAL REPORT

OPEN MEETINGS ACT
AND
ACCESS TO PUBLIC RECORDS ACT

ATTORNEY GENERAL PETER F. KILMARTIN

OPEN MEETINGS ACT

ANNUAL REPORT 2011

ATTORNEY GENERAL'S ANNUAL REPORT OF COMPLAINTS RECEIVED PURSUANT TO RHODE ISLAND GENERAL LAWS SECTION 42-46-1 ET. SEQ., THE OPEN MEETINGS ACT

Rhode Island General Laws Section 42-46-11 requires that the Attorney General submit to the Legislature an annual report summarizing the complaints received pursuant to the Open Meetings Act, including the number of complaints found to be meritorious and the action taken by the Attorney General in response to each complaint. The Attorney General is pleased to submit the following information concerning the calendar year 2011.

STATISTICS

OPEN MEETINGS ACT COMPLAINTS RECEIVED:	62
FINDINGS ISSUED BY THE ATTORNEY GENERAL:	38
VIOLATIONS FOUND:	19
WARNINGS ISSUED:	18
LITIGATION INITIATED:	1
WRITTEN ADVISORY OPINIONS:	
REQUESTS RECEIVED:	8
ISSUED:	5

VIOLATIONS FOUND/WARNINGS ISSUED

The Attorney General issued warnings in the following cases as a result of having found that they violated the Open Meetings Act:

OM 11-01	Berry v. Cumberland Fire District
OM 11-03	Beagan v. Albion Fire District
	Beagan v. Albion Fire District (May 26th Complaint)
	Beagan v. Albion Fire District (Custody and Protection)
OM 11-04	McFadden v. Exeter Board of Canvassers
OM 11-12	Duffy v. West Greenwich Town Council
OM 11-13	Stewart et. al. v. West Greenwich Town Council
OM 11-14	Andrea v. West Greenwich Town Council
OM 11-15	Beagan v. Albion Fire District (September 2010)
OM 11-16	Ives v. Town of New Shoreham & Electric Utilities Task Group
OM 11-21	Johnson v. West Greenwich Town Council
OM 11-22	Ash v. Pawtucket Zoning Board of Appeals
OM 11-26	Black v. Bristol County Water Authority

OM 11-27 Novak v. Western Coventry Fire District SAP Committee
OM 11-29 Zambarano v. North Smithfield School Budget Advisory Committee
OM 11-31 DesMarais v. Manville Fire District
OM 11-32 Mageau v. Charlestown Town Council
OM 11-34 Gugliemo v. Scituate Town Council
OM 11-36 Knight v. Pawtucket School Committee
OM 11-38 Armstrong v. Manville Fire Department, Board of Wardens

VIOLATIONS FOUND/LAWSUIT FILED

OM 11-06 Beagan v. Albion Fire District

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Summaries of all findings/written advisory opinions issued are attached hereto.

OPEN MEETINGS ACT FINDINGS - 2011

OM 11-01 **Berry v. Cumberland Fire District**

The Cumberland Fire District violated the OMA because its meeting was not open to the public as required. Based upon the evidence presented, the Complainant was unable to access the building where the Fire District held its meeting since the entrance door to the building was locked to access from the outside. See R.I. Gen. Laws § 42-46-3.
VIOLATION FOUND.
Issued January 31, 2011.

OM 11-02 **Charette v. Foster-Glocester Regional School Committee**

Complainant alleged that the School Committee violated the OMA when he was unable to hear the discussions during a meeting. This Department determined that there was no violation since there was no evidence presented that the Complainant requested any communication assistance or otherwise indicated that members of the School Committee or attendees needed to speak more loudly.
Issued February 1, 2011.

OM 11-03 **Beagan v. Albion Fire District**
PR 11-04 **Beagan v. Albion Fire District (May 26th Complaint)**
Beagan v. Albion Fire District (Custody and Protection)

The Albion Fire District violated the APRA when it assessed an unreasonable search and retrieval charge that was not supported by evidence. The Fire District also violated the OMA and the APRA by failing to maintain designated open and closed session minutes from October 2007 through January 2008. The Fire District did not violate the APRA when it extended the time to respond for "good cause" and did not violate the APRA with respect to various other allegations. This Department has no jurisdiction to review allegations of Chapter 1 of Title 38.
VIOLATION FOUND.
Issued February 7, 2011.

OM 11-04 **McFadden v. Exeter Board of Canvassers**

The Exeter Board of Canvassers violated the OMA when it held a meeting to discuss the issue of polling place availability for the 2011-2012 Exeter/West Greenwich school budget all day referendum when the agenda item only cited that the Board of Canvassers would "discuss any new business brought before the Board." The level of specificity that must be detailed for each agenda item depends on the

facts and circumstances surrounding each item. See Tanner v. The Town Council of the Town of East Greenwich, 880 A.2d 784 (R.I. 2005). The Board of Canvassers' public notice citing "new business" was insufficient since it did not contain "a statement specifying the nature of the business to be discussed." R.I. Gen. Laws § 42-46-6(b).
VIOLATION FOUND.
Issued February 15, 2011.

OM 11-05 **Ward v. Woonsocket School Committee**
Complainant alleged the School Committee violated the OMA when it convened in executive session under the item "Litigation (City of Woonsocket vs. WED)" and voted on the payment of legal fees to its attorney. Complainant also alleged the School Committee failed to publicly disclose the vote during the open session and that the issue was not appropriate for executive session. Based on the evidence presented to this Department, we found that the agenda item was sufficient as advertised to include a discussion concerning the increased compensation for the School Committee's attorney. We also concluded that a discussion about the attorney's compensation with respect to the litigation was appropriate for executive session in this instance. Lastly, this Department found that the School Committee did not violate the OMA by withholding the executive session vote. Here, the evidence was clear that the disclosure of the vote in open session would have jeopardized the School Committee's litigation strategy.
Issued February 18, 2011.

OM 11-06 **Beagan v. Albion Fire District**
PR 11-06 The Albion Fire District violated the APRA by: (1) failing to respond to two APRA requests within ten (10) business days; (2) failing to provide the appeal procedure in an APRA denial; and (3) failing to maintain certain meeting minutes. This Department also determined that the Albion Fire District violated the OMA with respect to agendas for two of its meetings. Specifically, we found that the agendas for the August 10, 2010 and September 21, 2010 meetings failed to adequately appraise the public of the nature of the business to be discussed and the agenda item "New Business" does not "fairly inform the public of the nature of the business to be discussed or acted upon." Tanner v. The Town Council of East Greenwich, 880 A.2d 784, 796 (R.I. 2006). On multiple occasions, this Department had previously warned the Fire District that similarly broad agenda items violated the OMA. See Albion Fire District Taxpayers Assoc. v. Albion Fire District, OM 08-12; Beagan v. Albion Fire District, OM 09-20. Because the Albion Fire District had been found in violation of the OMA by posting an

insufficient agenda for items such as "New Business" and "Old Business" in 2008 and 2009, the Fire District's August 10, 2010 and September 21, 2010 agendas that listed "New Business" willfully or knowing violated the OMA. Accordingly, this Department will file a lawsuit against the Fire District seeking civil fines.
LAWSUIT FILED.
VIOLATION FOUND.
Issued March 21, 2011.

OM 11-07 **Johnson v. West Greenwich Town Council**
The Town Council did not violate the OMA when it denied Complainant's request to have the executive session discussion concerning the job performance and character of the Town Administrator heard in open session. The executive session discussion was in response to complaints made by the Complainant against the Town Administrator. Even assuming the Complainant's job performance and character were discussed in executive session, this Department had previously held that when the discussions regarding job performance and character of multiple people are discussed, such that the discussions cannot be segregated, a person who desires such discussion to occur in closed session will be afforded that protection.
Issued March 25, 2011.

OM 11-08 **Kammerer v. City of Newport**
This Department concluded that the City did not violate the OMA since no meeting was convened for purposes of the OMA. Specifically, this Department determined that the communications and conversations between the City Solicitor and individual council members did not constitute a "quorum" of members of the City Council because those communications and conversations were unsolicited and occurred outside the presence of other City Council members. Moreover, this Department found that there were no collective discussions and/or action taken by a quorum of the members of the City Council.
Issued March 25, 2011.

OM 11-09 **Ross v. East Providence City Council**
The Complainant alleged that the City Council violated the OMA when a resolution, not advertised on the agenda, was initiated for discussion. This Department concluded that, although the resolution was initially brought up, no substantive discussion concerning the topic occurred and it was thereafter withdrawn.
Issued April 21, 2011.

OM 11-10 **Flanagan v. Coventry Town Council**

The Coventry Town Council ("Town Council") did not violate the OMA when three (3) members of the Town Council, who were also members of the Coventry Democratic Town Committee ("Town Committee") met at a Town Committee meeting. There was no evidence that the members discussed anything over which the Town Council had supervision, control, jurisdiction, or advisory power.
Issued May 6, 2011.

OM 11-11 **Mankofsky v. Middletown Town Council**

Complainant alleged the Town Council violated the OMA when he was prohibited from commenting on an agenda item because he had not filled out a form and provided it to the town clerk prior to the discussion of that docket item. This Department found nothing within the OMA that requires a public body to hold an open forum session, to entertain or to respond to any topic during an open session portion of a meeting.
Issued May 18, 2011.

OM 11-12 **Duffy v. West Greenwich Town Council**

The Town Council postponed its January 12, 2011 meeting to January 13, 2011 due to inclement weather. It posted its notice on January 13, 2011, which did not comply with the forty-eight (48) hour posting requirement. The Town Council violated the OMA when it convened its January 13, 2011 meeting on less than forty-eight (48) hours notice.
VIOLATION FOUND.
Issued May 24, 2011.

OM 11-13 **Stewart et. al. v. West Greenwich Town Council**

The West Greenwich Town Council violated the OMA when it posted notice on the Secretary of State's website on April 6, 2011 for its April 7, 2011 meeting, notwithstanding the other public notices being timely and properly filed. The Department requested a supplemental response to determine whether the violation was willful or knowing, thereby subjecting the Town Council to civil penalties.
VIOLATION FOUND.
Issued June 6, 2011.

OM 11-13B **Stewart et. al v. West Greenwich Town Council**

In Stewart et. al v. West Greenwich Town Council, OM 11-13, this Department found that the West Greenwich Town Council violated the OMA when it posted notice on the Secretary of State's website on April 6, 2011 for its April 7, 2011 meeting. Because there was evidence

that suggested that the Town Council had knowledge of the defective notice prior to conducting its April 7, 2011 meeting, this Department allowed the Town Council ten (10) business days from the date of the finding in Stewart to respond to this Department's inquiry concerning whether its violation was willful or knowing. This Department found that the Town Council did not willfully or knowingly violate the OMA since the additional evidence presented by the Town Council supported that it had no knowledge of the defective notice prior to conducting the April 7, 2011 meeting.
Issued September 22, 2011.

OM 11-14 **Andrea v. West Greenwich Town Council**
The West Greenwich Town Council ("Town Council") violated the OMA with respect to agendas for three of its meetings. Specifically, we found that none of the executive session agendas for the August 4, 2010, September 8, 2010 and November 17, 2010 meetings adequately apprised the public of the nature of the business to be discussed. The agenda item: "Executive Session - Pursuant to RIGL 42-46-5,A,1,2 - Personnel & Litigation & Collective Bargaining" did not "fairly inform the public of the nature of the business to be discussed or acted upon." Tanner v. The Town Council of East Greenwich, 880 A.2d 784 (R.I. 2005). The executive session agenda also failed to indicate the number of executive session matters that would be discussed.
VIOLATION FOUND.
Issued June 16, 2011.

OM 11-15 **Beagan v. Albion Fire District (September 2010)**
PR 11-15 The Albion Fire District did not violate the APRA when it conducted a reasonable search for a requested record, even though the search did not produce the requested record. The Fire District violated the APRA by failing to maintain minutes to various meetings in March 2006 and April 2006, and violated the APRA by failing to indicate the procedure for appealing the denial of records. See R.I. Gen. Laws § 38-2-7. Because the statute of limitations had expired prior to the filing of this complaint, this Department did not review whether the Fire District violated the OMA when certain minutes from 2008 failed to indicate the subsection upon which the executive session was convened.
VIOLATION FOUND.
Issued June 22, 2011.

OM 11-16 **Ives v. Town of New Shoreham & Electric Utilities Task Group**
PR 11-16 The Electric Utility Task Group violated the OMA when it discussed by e-mail public business among all the members of the Task Group.

The Town of New Shoreham violated the APRA when it failed to provide certain e-mails that this Department concluded were responsive to an APRA request. The Town did not violate the APRA in responding to a subsequent APRA request since the evidence established that the Town conducted a reasonable search for responsive records and no evidence established that other responsive records had not been provided. Nothing within the APRA requires that a particular Town official respond to the APRA request, provided that all responsive documents are provided.
VIOLATION FOUND.
Issued June 22, 2011.

OM 11-17 **Bozyan v. Middletown Town Council**
The Town Council did not violate the OMA when it convened into executive session for the sole purpose of receiving a report from its legal counsel. The evidence demonstrated that the Town Council did not discuss the report, and in fact, discussed and voted on the contents of the report at a subsequent open session meeting.
Issued July 6, 2011.

OM 11-18 **Mudge v. North Kingstown School Committee**
Complainant alleged the North Kingstown School Committee violated the OMA when it voted on the FY12 Jamestown tuition rate, yet that item was neither advertised nor listed on the meeting agenda. Complainant also alleged that the Jamestown contract was discussed during execution session, but that this item also lacked the specificity required under the OMA and it was an improper matter for executive session discussion. Based on the evidence presented, we found that even assuming the School Committee improperly noticed the FY12 Jamestown tuition rate, it was unclear to this Department how the Complainant was adversely affected as he attended the subject meeting and there was no evidence presented that he objected to the sufficiency of the open session notice. This Department also found that the executive session agenda concerning the Jamestown contract was sufficiently advertised and a proper matter for convening into executive session.
Issued July 20, 2011.

OM 11-19 **Waltonen v. West Greenwich Town Council (2)**
The Town Council did not violate the OMA when it commented on a topic that was not listed on the agenda for its meeting since the comment at issue was made in response to comments made by the Complainant, the comment at issue was made by the Town

Administrator and not a member of the Town Council, and the Town Council did not discuss the topic at the meeting.
Issued July 28, 2011.

OM 11-20 **Rogers v. East Providence School Committee**
Complainant alleged that the School Committee violated the OMA when it approved contracts for twenty-one school administrators at a public meeting under the executive session agenda item "Central Administrators' Employment Contracts'" without listing the names of the proposed appointees, number of positions for appointment and categories of positions for appointment. This Department concluded that the School Committee did not violate the OMA. Specifically, this Department determined that the agenda item "Central Administrators' Employment Contracts'" provided adequate notice under the OMA since it indicated the type of employment contracts that would be discussed during executive session and the open session agenda listed "Approval of Execution of Central Administrators Employment Contracts" as an item that the School Committee would take action on in the public session.
Issued July 28, 2011.

OM 11-21 **Johnson v. West Greenwich Town Council**
This Department concluded that the Town Council violated the OMA when it did not articulate a statement specifying the nature of the business to be discussed or make reference to a subdivision of § 42-46-5(a) upon convening into executive session.
VIOLATION FOUND.
Issued August 22, 2011.

OM 11-22 **Ash v. Pawtucket Zoning Board of Appeals**
The Zoning Board violated the OMA when it did not make meeting minutes available for public inspection at the office of the public body at its next regularly scheduled meeting. R.I. Gen. Laws § 42-46-7(b). The Zoning Board did not violate the OMA when it prohibited the Complainant from commenting on a topic during a public session. R.I. Gen. Laws §42-46-6(d); see Mankofsky v. Middletown Town Council, OM 11-11.
VIOLATION FOUND.
Issued August 22, 2011.

OM 11-23 **Knight v. Pawtucket School Committee**
The Pawtucket School Committee did not violate the OMA when it voted on teacher contracts in executive session when its agenda listed,

as one of the enumerated items, "teacher contract negotiations" and the agenda indicated convening into executive session was for the purpose of "discussing and/or acting upon." Moreover, as the disclosure of that vote would have potentially jeopardized a strategy, negotiation or investigation undertaken, the School Committee did not violate the OMA by its failure to disclose the executive session vote upon returning to open session.
Issued August 22, 2011.

OM 11-24 **Brien v. Woonsocket Housing Authority**
The complainant alleged the Woonsocket Housing Authority ("W.H.A.") violated the OMA when he was denied access to an informational meeting organized for residents of the Veteran's Memorial Housing Development, which is managed by the W.H.A. The evidence presented showed that no commissioners of the W.H.A. attended this informational meeting, nor was there any evidence presented that W.H.A. business was discussed. There was no violation of the OMA.
Issued September 2, 2011.

OM 11-25 **Coughlin v. Pawtucket School Committee**
The School Committee did not violate the OMA as its April 25, 2011 and May 31, 2011 agendas were specific enough to adequately inform the public that votes were to be taken on certain agenda items.
Issued September 12, 2011.

OM 11-26 **Black v. Bristol County Water Authority**
Access to Public Records Act and Open Meetings Act complaint that alleged numerous violations against the Bristol County Water Authority and its subcommittees. The Authority violated the APRA and/or the OMA by improperly denying an APRA request, failing to make open session minutes available in a timely manner, providing insufficient public notice, failing to record votes, and by improperly denying access to some requested records. The Authority did not violate the OMA and/or the APRA in other respects, including by requiring inspection of requested documents at the Authority's legal office.
VIOLATION FOUND.
Issued September 19, 2011.

OM 11-27 **Novak v. Western Coventry Fire District SAP Committee**
The SAP Committee violated the OMA when it held its June 1, 2011 meeting without properly posting its agenda. There was no evidence

that the violation was willful or knowing and no injunctive relief was necessary as the SAP Committee, upon realizing the agenda was not properly posted, deemed the meeting null and void and held a subsequent meeting.
VIOLATION FOUND.
Issued September 28, 2011.

OM 11-28 **Areglado, et. al. v. Charlestown Town Council**
The Charlestown Town Council did not violate the OMA when three members of the five member Town Council attended the South County Wind Forum as there was no evidence that all three members collectively discussed or acted upon any matter that the Town Council had supervision, control, jurisdiction, or advisory power.
Issued October 20, 2011.

OM 11-29 **Zambarano v. North Smithfield School Budget Advisory Committee**
This Department determined that the North Smithfield School Budget Advisory Committee, which consisted of members of the North Smithfield School Committee and North Smithfield Town Council, constituted a public body since their membership was constant and composed of public officials. The North Smithfield School Budget Advisory Committee therefore, violated the OMA when it met at several unposted meetings.
VIOLATION FOUND.
Issued October 26, 2011.

OM 11-30 **Langseth v. Rhode Island State Planning Council**
The Rhode Island State Planning Council ("Council") did not violate the OMA at its August 18, 2011 meeting as the evidence revealed that the Council only took one vote and that vote was properly recorded. The Council complied with the requirements of R.I. Gen. Laws § 42-46-7(3) namely, that there was "a record by individual members of any vote taken."
Issued November 4, 2011.

OM 11-31 **DesMarais v. Manville Fire District**
The Manville Fire District violated the OMA when it held its August 10, 2011 open meeting at a place within the Manville fire station that was inaccessible to persons with disabilities. See R.I. Gen. Laws § 42-46-13(c).
VIOLATION FOUND.
Issued November 8, 2011.

OM 11-32 **Mageau v. Charlestown Town Council**

The Charlestown Town Council violated the OMA when its June 15, 2011 agenda item "Personnel (Town Administrator)" did not adequately inform the public that the Town Council would undertake affirmative action and enter the Town Administrator into a new employment contract with a salary increase.
VIOLATION FOUND.
Issued November 17, 2011.

OM 11-33 **Portsmouth Democratic Town Committee v. Portsmouth Town Council**

This Department was not able to reach the merits of the alleged violation because the complaint was not filed until seven business days prior to the expiration of the Attorney General's statute of limitations. See R.I. Gen. Laws § 42-46-8(b).
Issued November 25, 2011.

OM 11-34 **Gugliemo v. Scituate Town Council**

The Town Council violated the OMA because the notice for its meeting did not include the location of a proposed cemetery.
VIOLATION FOUND.
Issued December 6, 2011.

OM 11-35 **Cloutier v. Bristol Warren Regional School District Joint Finance Committee**
Lynch v. Bristol Warren Regional School District Joint Finance Committee

The Bristol Warren Regional School District Joint Finance Committee ("Committee") did not violate the OMA as there was no evidence that members of the Committee improperly engaged in discussions of public business outside the public purview.
Issued December 8, 2011.

OM 11-36 **Knight v. Pawtucket School Committee**

The Pawtucket School Committee violated the OMA when it denied the Complainant access to the building where its meeting was held due to a locked door.
VIOLATION FOUND.
Issued December 14, 2011.

OM 11-37 **Johnson v. West Greenwich Town Council**

The Complainant alleged that the West Greenwich Town Council violated the OMA when it convened an unadvertised meeting to discuss the Town budget. In support of her complaint, the

Complainant relied upon an isolated statement made by a Town official that he met with the Town Council to discuss an amendment to the Town budget. Because the Town Council provided evidence that the Town official misspoke and only met with the Town Council President, and not a quorum of the Town Council members, this Department determined that no meeting was convened for purposes of the OMA. See Fischer v. Zoning Board for the Town of Charlestown, 723 A.2d 294 (R.I. 1999).
Issued December 27, 2011.

OM 11-38 **Armstrong v. Manville Fire Department, Board of Wardens**
The Board did not violate the OMA by failing to list everyone in attendance at a meeting as only members of the public body must be recorded as being present or absent. The Board did not violate the OMA because the meeting minutes recorded what members were present, so the notation "All in favor. Motion carried" was sufficient to inform the public of the "record by individual members of any vote taken." The Board violated the OMA when it failed to comply with the requirements of R.I. Gen. Laws § 42-46-4, which requires a open call vote to convene into executive session "of each member on the question of holding a meeting closed to the public and the reason for holding a closed meeting, by a citation to a subdivision in R.I. Gen. Laws § 42-46-5(a) and a statement specifying the nature of the business to be discussed, shall be recorded and entered into the minutes of the meeting." The Board did not violate the OMA by sealing all of its executive session minutes. The Board's agenda was sufficient to fairly inform the public of the nature of the business to be discussed in executive session and therefore did not violate the OMA.
VIOLATION FOUND.
Issued December 27, 2011.

OPEN MEETINGS ACT
ADVISORY OPINIONS - 2011

ADV OM11-01 **In Re Town of Jamestown**
The Town of Jamestown sought an advisory opinion as to whether it would be a violation of the OMA if two members of a five member committee attended meetings with municipal staff persons. Based upon the facts presented it appears that less than a quorum of the committee members would meet on an ad hoc basis with municipal staff persons. Such a conglomeration of individuals would not constitute a quorum and the OMA is not triggered in the absence of a quorum. The Department cautions that, through their

actions, the two committee members could effectively create a subcommittee or that even if less than a "quorum" of committee members meets with staff members, a "rolling" or "walking" quorum may be formed if these committee members subsequently discuss the same public business with other committee members outside the public purview.
Issued February 3, 2011.

ADV OM11-02 **In Re Town of Charlestown**
Pursuant to R.I. Gen. Laws § 42-46-5(a)(1), the Charlestown Town Council may discuss the Town Administrator's job performance evaluation in executive session since the evidence established that the evaluation would include a discussion of the Town Administrator's "job performance, character, or physical or mental health."
Issued April 1, 2011.

ADV OM11-03 **In Re Smithfield School Department**
The Smithfield School Department sought an advisory opinion on whether it could advertise its school committee meeting notices in The Valley Breeze and comply with the requirements of R.I. Gen. Laws § 42-46-6(c), which requires school committees to publish notice in a newspaper of general circulation. This Department found that The Valley Breeze is a newspaper of general circulation since it is issued at regular intervals and has a paid subscription list. Our advisory opinion in In Re Cumberland School Committee, ADV OM 09-02 is no longer controlling with respect to The Valley Breeze. This opinion has been superseded by legislation.
Issued May 2, 2011.

ADV OM11-04 **In Re Town of North Kingstown**
This Department declined to provide an advisory opinion based upon the lack of clarity regarding the precise legal question upon which the Town sought advice. Nothing bars the Town from seeking another advisory opinion, whether verbally or in writing, based upon a concrete set of facts.
Issued June 23, 2011.

ADV OM 11-05 **In re Portsmouth Water and Fire District**
The Portsmouth Water and Fire District requested an advisory opinion as to whether certain e-mail correspondences violated the OMA. Because the subject of the Portsmouth Water and Fire District's advisory request concerned past e-mail correspondences

and did not involve pending action, this Department declined to issue an advisory opinion providing advice concerning the specific content of the provided emails. Instead, this Department issued a general advisory opinion regarding the use of electronic communications under the OMA. On this issue, we directed the legal counsel to our advisory opinion in In re: South Kingstown School Committee Electronic Mail Policy, ADV OM 04-01.
Issued August 22, 2011.

End of OMA Summaries

ACCESS TO PUBLIC RECORDS ACT

ANNUAL REPORT 2011

ATTORNEY GENERAL'S ANNUAL REPORT OF COMPLAINTS RECEIVED PURSUANT TO RHODE ISLAND GENERAL LAWS SECTION 38-2-1 ET. SEQ., THE ACCESS TO PUBLIC RECORDS ACT

Rhode Island General Laws Section 38-2-15 requires that the Attorney General submit to the Legislature an annual report summarizing the complaints received pursuant to the Access to Public Records Act, including the number of complaints found to be meritorious and the action taken by the Attorney General in response to each complaint. The Attorney General is pleased to submit the following information concerning the calendar year 2011.

STATISTICS

ACCESS TO PUBLIC RECORDS ACT COMPLAINTS RECEIVED:	53
FINDINGS ISSUED BY THE ATTORNEY GENERAL:	39
VIOLATIONS FOUND:	22
WARNINGS ISSUED:	22
LITIGATION INITIATED:	0
WRITTEN ADVISORY OPINIONS:	
REQUESTS RECEIVED:	5
ISSUED:	2

VIOLATIONS FOUND/WARNINGS ISSUED

Warnings were issued in the following cases as a result of having found that they violated the Access to Public Records Act:

PR 11-03	Beagan v. Town of Lincoln
PR 11-04	Beagan v. Albion Fire District;
	Beagan v. Albion Fire District (May 26th Complaint); and
	Beagan v. Albion Fire District (Custody and Protection)
PR 11-05	Chase v. Department of Corrections
PR 11-06	Beagan v. Albion Fire District
PR 11-07	Pagliarini v. Town of East Greenwich
PR 11-08	Warwick Public Schools v. Department of Education
PR 11-09	Reilly v. Providence Economic Development Partnership
PR 11-10	d'Oliveira v. Department of Public Safety
PR 11-12	North East Independent v. East Greenwich School District
	Elizabeth McNamara v. East Greenwich School Department
PR 11-15	Beagan v. Albion Fire District (September 2010)

PR 11-16	Ives v. Town of New Shoreham & Electric Utilities Task Group
PR 11-17	Waltonen v. Town of West Greenwich
PR 11-20	Fitzmorris v. Portsmouth Town Council
PR 11-22	Brady v. Town of North Providence
PR 11-23	Reilly v. Providence Economic Development Partnership
PR 11-25	Black v. Bristol County Water Authority
PR 11-26	Krohn v. Office of Long Term-Care Ombudsman
	Krohn v. Alliance for Better-Long Term Care
PR 11-31	Chappell v. Town of North Kingstown
PR 11-32	Deion v. Town of North Providence
PR 11-35	Howard v. Department of Environmental Management
PR 11-36	Chase v. Department of Corrections
PR 11-39	Walters v. East Providence Police Department

VIOLATIONS FOUND/LAWSUIT FILED

None

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Summaries of all findings/written advisory opinions issued are attached hereto.

ACCESS TO PUBLIC RECORDS ACT FINDINGS - 2011

PR 11-01 **Calise v. City of Pawtucket**

Complainant alleged that the City violated the APRA when it denied her records request. Complainant's legal counsel subsequently filed a complaint on her behalf against the City of Pawtucket in the Rhode Island Superior Court. The Superior Court complaint contained the same allegations that the Complainant made in the APRA complaint filed with this Department. This Department has consistently taken the position that when a complaint is filed in Superior Court alleging the same APRA or Open Meetings Act allegations, this Department's investigation into the APRA or Open Meetings Act complaint must yield to the Superior Court's jurisdiction. See e.g. Graziano v. Personnel Appeals Board, OM 97-21; Blais v. Revens, PR 01-01. Therefore, this Department took no action on this matter and yielded to the Superior Court's jurisdiction in this matter.

Issued January 26, 2011.

PR 11-02 **McBurney v. City of Pawtucket**

Complainant alleged that the City violated the APRA when it failed to provide all of the documents responsive to his records request. Complainant subsequently filed a complaint against the City of Pawtucket in the Rhode Island Superior Court. The Superior Court complaint contained the same allegations that the Complainant made in the APRA complaint filed with this Department. This Department has consistently taken the position that when a complaint is filed in Superior Court alleging the same APRA or Open Meetings Act allegations, this Department's investigation into the APRA or Open Meetings Act complaint must yield to the Superior Court's jurisdiction. See e.g. Graziano v. Personnel Appeals Board, OM 97-21; Blais v. Revens, PR 01-01. Therefore, this Department took no action on this matter and yielded to the Superior Court's jurisdiction in this matter.

Issued January 26, 2011.

PR 11-03 **Beagan v. Town of Lincoln**

Town violated the APRA by failing to respond to request within ten (10) business days and failing to respond to administrative appeal within ten (10) business days. Town advised to respond to request and this Department's inquiry concerning whether failure to timely respond constituted a willful and knowing violation.

VIOLATION FOUND.

Issued January 27, 2011.

PR 11-03B **Beagan v. Town of Lincoln**

In Beagan v. Town of Lincoln, PR 10-38, this Department determined that the Town of Lincoln violated the APRA when it failed to respond to four APRA requests within ten (10) business days. This Department allowed the Town of Lincoln ten (10) business days to respond to the four APRA requests. In light of the Town of Lincoln's prior APRA violations, this Department further instructed the Town to respond to our inquiry concerning whether its violations in Beagan v. Town of Lincoln, PR 10-38 and Beagan v. Town of Lincoln, PR 11-03 were willful or knowing. The Town of Lincoln responded by providing the Complainant with the all of the documents it possessed that were responsive to the Complainant's APRA requests in Beagan v. Town of Lincoln, PR 10-38. The Town of Lincoln further explained that it did not possess any documents responsive to the Complainant's request in Beagan v. Town of Lincoln, PR 11-03, and this Department determined the Town's search and retrieval method was adequate. Based upon the evidence presented and because there was evidence that the Town of Lincoln previously provided some responsive documents to the Complainant, this Department determined that the Town did not willfully or knowingly violate the APRA.

Issued November 25, 2011.

PR 11-04 **Beagan v. Albion Fire District**

OM 11-03 **Beagan v. Albion Fire District (May 26th Complaint)**

Beagan v. Albion Fire District (Custody and Protection)

The Albion Fire District violated the APRA when it assessed an unreasonable search and retrieval charge that was not supported by evidence. The Fire District also violated the OMA and the APRA by failing to maintain designated open and closed session minutes from October 2007 through January 2008. The Fire District did not violate the APRA when it extended the time to respond for "good cause" and did not violate the APRA with respect to various other allegations. This Department has no jurisdiction to review allegations of Chapter 1 of Title 38.

VIOLATION FOUND.

Issued February 7, 2011.

PR 11-05 **Chase v. Department of Corrections**

The Department of Corrections violated the APRA when it responded to an APRA request by providing written answers and not documents responsive to the records request.

VIOLATION FOUND.

Issued March 10, 2011.

PR 11-05B **Chase v. Department of Corrections**

In Chase v. Department of Corrections, PR 11-05, this Department found that the Department of Corrections violated the APRA when it responded to an APRA request by providing written responses, instead of responsive documents. This Department allowed the Department of Corrections ten (10) business days from the date of the finding in Chase to provide the Complainant with responsive documents or an otherwise appropriate response under the APRA. The Department of Corrections responded by providing the Complainant with the only responsive documents that exist and indicating that it does not possess other responsive documents. Accordingly, the Department of Corrections complied with this Department's directive in Chase.

Issued July 1, 2011.

PR 11-06 **Beagan v. Albion Fire District**
OM 11-06

The Albion Fire District violated the APRA by: (1) failing to respond to two APRA requests within ten (10) business days; (2) failing to provide the appeal procedure in an APRA denial; and (3) failing to maintain certain meeting minutes.

VIOLATION FOUND.

Issued March 21, 2011.

PR 11-07 **Pagliarini v. Town of East Greenwich**

The Town violated the APRA when it charged the complainant $1.50 for a copy of an Assessor's Plat and Lot map, and not the appropriate fee of $0.15 under the APRA.

VIOLATION FOUND.

Issued March 25, 2011.

PR 11-08 **Warwick Public Schools v. Department of Education**

The Department of Education ("DOE") violated the procedural requirements of the APRA by failing to respond to the administrative appeal within ten (10) business days. The DOE did not violate the substantive requirements of the APRA when it failed to disclose the requested records because the records were identifiable to an individual student and an individual parent and therefore exempt. See R.I. Gen. Laws §38-2-2(4)(i)(A)(I).

VIOLATION FOUND.

Issued March 30, 2011.

PR 11-09 **Reilly v. Providence Economic Development Partnership**

Complainant alleged that the Providence Economic Development Partnership ("PEDP") improperly denied access to a Portfolio Loan List, which contained certain information about its loans to borrowers. The PEDP acknowledged that no APRA provision (or other state and/or federal law) exempts the Portfolio Loan List from public disclosure. This Department agreed and concluded that the Portfolio Loan List is not exempt from public disclosure under the APRA since the information contained in the Portfolio Loan List is not of a privileged or confidential nature under R.I. Gen. Laws § 38-2-2(4)(i)(B). See The Providence Journal Company v. Convention Center Authority, 774 A.2d 40, 47 (R.I. 2001). We also concluded that the Portfolio Loan List is not exempt under R.I. Gen. Laws § 38-2-2(4)(i)(A)(I) since PEDP borrowers are primarily businesses and/or organizations, and not individuals. Lastly, this Department concluded that the PEDP violated the APRA when it failed to respond to the APRA request to access the Portfolio Loan List within ten (10) business days.

VIOLATION FOUND.

Issued May 5, 2011.

PR 11-10 **d'Oliveira v. Department of Public Safety**

The Department of Public Safety violated the APRA when it denied a request in total for the raw electronic accident data for June 2010. Although this Department acknowledged that the requested electronic data may contain non-public information and that the process for reviewing and redacting these records may be time consuming, the cost associated with this review should be borne by the person seeking the documents. See Direct Action for Rights and Equality v. Gannon, 819 A.2d 651, 661 (R.I. 2003). The Department of Public Safety should have advised the requesting party concerning the cost to review and redact the requested documents and allowed the requesting party to determine whether he still sought the records.

VIOLATION FOUND.

Issued May 20, 2011.

PR 11-11 **Palumbo v. Coastal Resources Management Council**

The Coastal Resources Management Council did not violate the APRA when it failed to respond to an APRA request since the evidence did not establish that the request was ever received.

Issued May 23, 2011.

PR 11-12 **North East Independent v. East Greenwich School District**
Elizabeth McNamara v. East Greenwich School Department

The School District violated the APRA by failing to provide certain responsive documents to Complainants. The School District contended that the requested documents were work product and therefore exempt from public disclosure under the APRA. See R.I. Gen. Laws § 38-2-2(4)(i)(K). Because the School District previously provided some of the requested documents to potential adversaries it waived its work product privilege with respect to the disclosed documents. Johnson v. C.G. Sargeant's Sons Corporation, 1979 WL 200311, * 3 (R.I. Super., Feb. 13, 1979). Accordingly, the disclosed documents were not work product, but public records subject to disclosure under the APRA.

VIOLATION FOUND.

Issued May 31, 2011.

PR 11-13 **Stafford v. Rhode Island Family Court**

The Rhode Island Family Court did not violate the APRA when it failed to respond to an APRA request since there was no evidence that the request was made to the proper person pursuant to Judiciary procedures.

Issued June 9, 2011.

PR 11-14 **Johnson v. Rhode Island Family Court**

The Rhode Island Family Court did not violate the APRA when it failed to respond to an APRA request since there was no evidence that the request was made to the proper person pursuant to Judiciary procedures.

Issued June 9, 2011.

PR 11-15 **Beagan v. Albion Fire District (September 2010)**
OM 11-15

The Albion Fire District did not violate the APRA when it conducted a reasonable search for a requested record, even though the search did not produce the requested record. The Fire District violated the APRA by failing to maintain minutes to various meetings in March 2006 and April 2006, and violated the APRA by failing to indicate the procedure for appealing the denial of records. See R.I. Gen. Laws § 38-2-7. Because the statute of limitations had expired prior to the filing of this complaint, this Department did not review whether the Fire District violated the OMA when certain minutes from 2008 failed to indicate the subsection upon which the executive session was convened.

VIOLATION FOUND.

Issued June 22, 2011.

PR 11-16 **Ives v. Town of New Shoreham & Electric Utilities Task Group**
OM 11-16 The Electric Utility Task Group violated the OMA when it discussed by e-mail public business among all the members of the Task Group. The Town of New Shoreham violated the APRA when it failed to provide certain e-mails that this Department concluded were responsive to an APRA request. The Town did not violate the APRA in responding to a subsequent APRA request since the evidence established that the Town conducted a reasonable search for responsive records and no evidence established that other responsive records had not been provided. Nothing within the APRA requires that a particular Town official respond to the APRA request, provided that all responsive documents are provided.
VIOLATION FOUND.
Issued June 22, 2011.

PR 11-17 **Waltonen v. Town of West Greenwich**
The Town of West Greenwich violated the APRA by failing to establish an APRA procedure pursuant to R.I. Gen. Laws § 38-2-3(c).
VIOLATION FOUND.
Issued June 28, 2011.

PR 11-18 **Miller v. City of East Providence**
The City of East Providence did not violate the APRA since the evidence established that the requested records were made available within ten (10) business days of the receipt of the request.
Issued July 1, 2011.

PR 11-19 **Silvia v. Town of Warren**
Complainant alleged that the Town violated the APRA when it failed to provide a copy of the Town Manager's annual written performance. This Department concluded that the Town Manager's annual written performance evaluation was not a public record under the APRA since it related to the work performance evaluation of an identifiable individual employee. See R.I. Gen. Laws § 38-2-2(4)(i)(A)-(Y).
Issued July 1, 2011.

PR 11-20 **Fitzmorris v. Portsmouth Town Council**
The Town violated the APRA when it failed to respond to complainant's request within ten (10) business days. See R.I. Gen. Laws § 38-2-7. The Town also violated the APRA by failing to establish an APRA procedure pursuant to R.I. Gen. Laws § 38-2-3(c).
VIOLATION FOUND.
Issued July 13, 2011.

PR 11-21 **Palazzo v. Rhode Island Senate**

The Senate did not violate the APRA in responding to a request since the evidence demonstrated that its search and retrieval was reasonable based upon the request received.

Issued August 16, 2011.

PR11-22 **Brady v. Town of North Providence**

The Town violated the APRA when it failed to respond to the Complainant's APRA request within ten (10) business days, either by producing responsive documents; denying the request, in writing, citing the applicable exemption and the appeals process; or by extending the time period necessary to comply.

VIOLATION FOUND.

Issued August 22, 2011.

PR11-23 **Reilly v. Providence Economic Development Partnership**

The Providence Economic Development Partnership violated the APRA when it denied a request for public records and failed to indicate the procedures for appealing the denial. See R.I. Gen. Laws § 38-2-7. Although the Providence Economic Development Partnership denied the Complainant's record request on the basis that it did not maintain the requested records in the requested format, it subsequently provided responsive documents. Because there was evidence presented to this Department that suggested the Providence Economic Development Partnership may have been capable of providing the records within the time period mandated under the APRA, this Department allowed the Providence Economic Development Partnership ten (10) business days to respond to this Department's inquiry concerning whether its violation was willful and knowing pursuant to R.I. Gen. Laws 38-2-9(d).

VIOLATION FOUND.

Issued August 22, 2011.

PR 11-24 **Rocha v. Rhode Island Secretary of State**

The Rhode Island Secretary of State did not violate the APRA when it failed to respond to an APRA request within ten (10) business days since there was no evidence to substantiate that the request was received.

Issued September 9, 2011.

PR 11-25 **Black v. Bristol County Water Authority**

Access to Public Records Act and Open Meetings Act complaint that alleged numerous violations against the Bristol County Water Authority and its subcommittees. The Authority violated the APRA and/or the OMA by improperly denying an APRA request, failing to make open session minutes available in a timely manner, providing insufficient public notice, failing to record votes, and by improperly denying access to some requested records. The Authority did not violate the OMA and/or the APRA in other respects, including by requiring inspection of requested documents at the Authority's legal office.

VIOLATION FOUND.

Issued September 19, 2011.

PR 11-26 **Krohn v. Office of Long Term-Care Ombudsman**
Krohn v. Alliance for Better-Long Term Care

The Alliance for Better-Long Term Care violated the APRA when it failed to respond to an APRA request in writing within ten (10) business days. See R.I. Gen. Laws § 38-2-7. Although the Office of Long Term-Care Ombudsman extended its time to respond to an APRA request by twenty (20) business days, it violated the APRA when it failed to provide the Complainant with any documents or any other response on or before the expiration of the twenty (20) business day extension. See R.I. Gen. Laws § 38-2-7(b).

VIOLATION FOUND.

Issued September 22, 2011.

PR 11-27 **Risk Metrics Corporation v. Department of Labor and Training**

The Rhode Island Department of Labor and Training did not violate the APRA when it denied the Complainant's request for the SIC codes, I&E codes and classification codes concerning Rhode Island employers. The unambiguous language of R.I. Gen. Laws § 28-36-12(d) states that all information except for workers' compensation insurance coverage verification shall be considered confidential under the APRA.

Issued October 3, 2011.

PR 11-28 **Eikeland v. Bristol Police Department**

The Bristol Police Department ("Police Department") did not violate the APRA when it failed to respond to the Complainant's August 1, 2011 request as there was no evidence that the Police Department received the APRA request. The evidence further established that the

Police Department, after receiving the APRA request through the filing of this complaint, responded to the request.
Issued October 6, 2011.

PR 11-29 **Rhode Island Foundation for Fair Contracting v. URI**
The University of Rhode Island did not violate the APRA when it redacted the names on the payroll records of its subcontractor. In utilizing the balancing test, there is minimal, if any, public interest in the disclosure of the individual employee names on these payroll records; however, there is a substantial privacy concern in the release of an individual's name on his or her payroll record.
Issued October 17, 2011.

PR 11-30 **Livingston v. Department of Health**
The Department of Health (DOH) did not violate the APRA because the evidence was undisputed that the DOH responded to the Complainant's request within ten (10) business days, although the Complainant did not receive the response until after the ten (10) business day period.
Issued October 19, 2011.

PR 11-31 **Chappell v. Town of North Kingstown**
The Town of North Kingstown violated the APRA when it failed to respond to an APRA request with ten (10) business days. R.I. Gen. Laws § 38-2-7.
VIOLATION FOUND.
Issued October 26, 2011.

PR 11-32 **Deion v. Town of North Providence**
The Town of North Providence violated the APRA when it charged the complainant $25.00 for a CD. A public body may not charge more than the "reasonable actual costs" for providing electronic records. R.I. Gen. Laws § 38-2-4(a).
VIOLATION FOUND.
Issued November 3, 2011.

PR 11-33 **Warfel v. Town of New Shoreham**
The Town of New Shoreham did not violate the APRA when it denied the Complainant's APRA request for a copy of the contract between the Town Manager and the Town of New Shoreham as that document was identifiable to an individual employee. See R.I. Gen. Laws § 38-2-2(5)(i)(A)(I), which, in pertinent part, exempts from public disclosure

"[a]ll records which are identifiable to an individual applicant for benefits, client, patient, student, or employee."
Issued November 4, 2011.

PR 11-34 **McLaughlin v. Rhode Island Family Court**
The Rhode Island Family Court did not violate the APRA when it failed to provide records within ten (10) business days since the Complainant's APRA request was unclear, and the Court was unable to determine precisely what records were being requested. Black v. Bristol County Water Authority, OM 11-26, PR 11-25.
Issued November 7, 2011.

PR 11-35 **Howard v. Department of Environmental Management**
The Department of Environmental Management violated the APRA when it did not respond to an APRA request within ten (10) business days.
VIOLATION FOUND.
Issued December 6, 2011.

PR 11-36 **Chase v. Department of Corrections**
The DOC violated the APRA when it did not appropriately respond to an APRA request. Instead of providing the "source" documents to the Complainant, the DOC provided documents that it created from information contained in the "source documents." R.I. Gen. Laws § 38-2-3(f).
VIOLATION FOUND.
Issued December 6, 2011.

PR 11-37 **The Block Island Times v. Office of the Mental Health Advocate**
The Office of the Mental Health Advocate did not violate the APRA because R.I. Gen. Laws § 38-2-2(5)(i)(S) exempts from disclosure "[r]ecords, reports, opinions, information, and statements required to be kept confidential by federal law or regulation or state law, or rule of court." Based upon the plain language of the Mental Health Law, R.I. Gen. Laws § 40.1-5-18, the requested records were exempt from public disclosure.
Issued December 23, 2011.

PR11-38 **Walters v. Department of Public Safety**
The Complainant alleged that the Department of Public Safety violated the APRA when it denied his request for a police report, of which he was the subject. This Department determined that the requested police report was exempt from public disclosure under R.I. Gen. Laws § 38-2-

2(5)(i)(D) since disclosure of the report, which described an incident that did not lead to an arrest, "could reasonably be expected to constitute an unwarranted invasion of personal privacy." In re: Cumberland Police Department, ADV PR 03-02; Snow v. Dept. of Public Safety, PR 10-12. This Department further determined that the requested police report was exempt from public disclosure under R.I. Gen. Laws § 38-2-2(5)(i)(A)(I), which exempts "[a]ll records which are identifiable to an individual," Robinson v. Malinoff, 770 A.2d 873 (R.I. 2001), and the fact that the Complainant requested records concerning himself does not guarantee him any greater right to access the records than any member of the general public. See Bernard v. Vose, 730, A.2d 30 (R.I. 1999).
Issued December 27, 2011.

PR11-39 **Walters v. East Providence Police Department**
The East Providence Police Department violated the APRA when it failed to indicate the appeal procedures in its denial letter, R.I. Gen. Laws § 38-2-7(a), and failed to respond to an administrative appeal within ten (10) business days. R.I. Gen. Laws § 38-2-8(a). The East Providence Police Department did not violate the APRA when it denied the Complainant's APRA request for Internal Affairs documents and witness statements because the records were, at the very least, identifiable to the Complainant and not susceptible to redaction and therefore, exempt from disclosure under R.I. Gen. Laws § 38-2-2(5)(i)(A)(I); see also Direct Action for Rights and Equality v. Gannon, 713 A.2d 218 (R.I. 1998); Robinson v. Malinoff, 770 A.2d 873 (R.I. 2001). This Department further determined that the Complainant had no greater interest in gaining access to the requested records than any other member of the general public. See Bernard v. Vose, 730 A.2d 30, 31 (R.I. 1999).
VIOLATION FOUND.
Issued December 27, 2011.

ACCESS TO PUBLIC RECORDS ACT ADVISORY OPINIONS - 2011

ADV PR 11-01 **In Re Request from the Office of the Treasurer (Pension Board)**
The names of beneficiaries receiving state pensions are public record and must be disclosed even if the beneficiary is/was not a state employee and is receiving a so-called "survivor pension."
Issued June 27, 2011.

ADV PR 11-02 **In re Department of Education**

The Department of Education sought an advisory opinion concerning whether aggregate performance data related to identifiable teachers was a public record. Pursuant to R.I. Gen. Laws § 38-2-2(5)(i)(A)(I) records identifiable to individual employees are exempt, although an outstanding question concerning the subject records is whether the records could be provided in a redacted manner.
Issued August 22, 2011.

End of APRA Summaries